

SCHEDULE 14A
Consent Statement Pursuant to Section 14(a)
of the Securities Exchange Act of 1934 (Amendment No. __)

Filed by the Registrant ☐

Filed by a Party other than the Registrant ☒

Check the appropriate box:

- ☐ Preliminary Proxy Statement
☐ Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
☐ Definitive Proxy Statement
☐ Definitive Additional Materials
☒ Soliciting Material Under Rule 14a-12

VIVUS, Inc.

(Name of Registrant as Specified In Its Charter)

**First Manhattan Co.
First Health, L.P.
First Health Limited
First Health Associates, L.P.
First BioMed Management Associates, LLC
First BioMed, L.P.
First BioMed Portfolio, L.P.
Michael James Astrue
Jon C. Biro
Samuel F. Colin
Johannes J.P. Kastelein
David York Norton
Herman Rosenman
Rolf Bass
Melvin L. Keating**

(Name of Person(s) Filing Consent Statement, if other than the Registrant)

Payment of Filing Fee (check the appropriate box):

☒ No fee required.

☐ Fee computed on table below per Exchange Act Rule 14a-6(i)(4) and 0-11.

1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

☐ Fee paid previously with preliminary materials.

☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

On April 12, 2013, First Manhattan Co. and its affiliates (collectively, "First Manhattan") filed a Schedule 13D Amendment with the Securities and Exchange Commission which attached as an exhibit a letter from First Manhattan to VIVUS, Inc. ("Vivus"). Such letter responded to a request from Vivus that the Nominating and Governance Committee of its board of directors (the "Board") be given the opportunity to interview each of the individuals nominated by First Manhattan (the "Nominees") for election to the Board and that the Nominees complete questionnaires provided by Vivus. The letter expressed First Manhattan's willingness to allow the Nominating and Governance Committee to interview the Nominees, but expressed concern that such a request could be used as a tactic to delay the 2013 annual meeting of stockholders (the "Annual Meeting"). The letter also included a request by First Manhattan that Vivus publicly commit to holding the Annual Meeting no later than June 30, 2013 and confirm that the date of the Annual Meeting will not be delayed without the mutual written agreement of First Manhattan and Vivus. A copy of the letter is attached as Exhibit 1.

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April 9, 2013

Via Electronic Mail and FedEx

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004
Att: Joseph E. Gilligan

Re: Nomination of Directors to the Board of VIVUS, Inc.

Dear Mr. Gilligan:

I am writing in response to your letter dated April 2, 2013 (the "April 2 Letter") with respect to the request by the Nominating and Governance Committee (the "Committee") of the board of directors (the "Board") of VIVUS, Inc. (the "Company") that it be given the opportunity to interview each of the six candidates (the "Nominees") nominated by an affiliate of our client, First Manhattan Co. ("FMC"), for election to the Board at the Company's 2013 annual meeting of stockholders (the "Annual Meeting"). FMC is pleased that the Committee desires to interview the Nominees, as they are convinced that the VIVUS stockholders will find them to be highly qualified and accomplished individuals of the highest caliber with the skills and experience necessary to lead the Company in this critical time.

FMC is willing to make the Nominees available for interview by the Committee, and the Nominees are likewise willing to undertake the interviews and provide the Committee with completed copies of the Company's director nominee questionnaire, in each case, as requested in the April 2 Letter. However, prior

to complying with such requests, FMC wants to be certain that such interviews and questionnaires would be part of a serious evaluation of our Nominees and their qualifications, as compared to those of the incumbent directors, and not merely a delaying tactic as part of a plan to postpone the Annual Meeting and disrupt the timely exercise of stockholder voting rights. Therefore, FMC hereby requests that the Company confirm and publicly announce the date of the Annual Meeting, to be no later than June 30, 2013, and confirm that the Annual Meeting will not be further delayed without the mutual written agreement of FMC and the Company. Should the Company agree to the foregoing request, please have the Company countersign this letter below and provide us with a proposed timeline of nominee interviews and related events. We request that the interview process be completed by April 21, 2013.

If the Company is unwilling to agree to the foregoing request, we will be forced to conclude that the Committee's interview request is not part of a serious evaluation of our Nominees but rather part of a plan to avoid a timely stockholder vote.

If the Committee is serious in its desire to work constructively in this process, it is important that it, and the Board, keep in mind that our client is convinced that it is necessary and appropriate for its Nominees to be elected to the Board, and firmly believes that VIVUS stockholders will agree.

Should you have any questions or comments, or require any further information with respect to the foregoing, please do not hesitate to call me at (212) 756-2208 or Marc Weingarten at (212) 756-2280.

Very truly yours,

/s/ David E. Rosewater
David E. Rosewater

cc: Linda M. Dairiki Shortliffe, M.D.
Chair, Nominating and Governance Committee of VIVUS, Inc.
John L. Slebir, Esq.
Vice President, Business Development and General Counsel of VIVUS, Inc.
Michael James Astrue

Jon C. Biro
Samuel F. Colin
Johannes J.P. Kastelein
David York Norton
Herman Rosenman
Rolf Bass
Melvin L. Keating

Each of the undersigned agree to the terms of the foregoing letter.

FIRST MANHATTAN CO.

By: FIRST MANHATTAN LLC, General Partner

By: /s/ Neal K. Stearns

Name: Neal K. Stearns

Title: Managing Member

VIVUS, INC.

By:

Name: Leland F. Wilson

Name: Edward F. Wilson
Title: Chief Executive Officer